

## **REMARKS**

### **File History**

In the final Office action of 12/12/2004, the following rejections, objections and/or allowances were made:

> Claims 1-3 were rejected under 35 USC §102 as being fully anticipated by Feldenz (DE 196-15-114).

> Claims 4-5 were rejected under 35 USC §103(a) as being obvious over Feldenz in further view of Kockelman (US Pat. 6,342,017).

> Claims 6-34 were allowed.

### **Summary of Current Response**

Claims 1-5 are canceled without prejudice.

Remarks are presented concerning the art applied to now canceled Claims 1-5.

### **Reservation of Right to Later Prosecute Canceled Claims**

Claims 1-5 are canceled here in order to expedite the issuance of the allowed claims. In canceling Claims 1-5, Applicant is not acquiescing to the claim constructions or interpretations of the applied art made in the final Office action.

Previously amended and now canceled Claim 1 recited: "An amusement device comprising ... characterized in that the movable track portion extends substantially horizontally in said first position, whereas the movable track portion extends at an angle to the horizontal in said second position, said angle being sufficiently large to provide a sense of excitement to the one or more persons in the vehicle." (emphasis added).

In finally rejecting Claim 1, the PTO makes the following finding of fact re the Feldenz reference: "As the wheel moves [,] the track portion stays perpendicular to the wheel, and moves around and therefore moves in a horizontal direction and in a vertical direction as the wheel spins [,] bringing the track portion from the track [being] on the right side of the figure to the continuation of the track on the left side of the figure" (Page 2, bottom paragraph of action, bracketed text added for clarity).

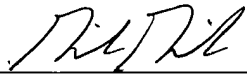
Moreover, in the Response to Argument, the PTO takes the position that: "It is understood that when moving in an arc one is moving at a given angle from one position to another. By elevating the vehicle [there] would be a sufficient move[ment] to allow for passengers to achieve a level of excitement from the change of height." (Page 4, top 3 lines of action, bracketed text added for clarity, underlining added for emphasis).

It appears that the PTO is rejecting a claim not made by Applicant. Claim 1 did not state that a level of excitement would be created "from the change of height". Instead Claim 1 recited a specific angle as measured relative to a specific reference, namely, "an angle [relative] to the horizontal" where this angle is the angle at which the movable track portion extends relative to the horizontal.

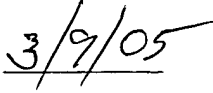
Applicant does not understand what the intended meaning is of the PTO finding that, in Feldenz, "the track portion stays perpendicular to the wheel". How and why does this come about? Claim 1 recited an angle of extension for the track, not just any angle measured in any desired way. Feldenz teaches that his track portion should pivot freely and thus remain essentially horizontal as the wheel turns. It is not understood how the PTO can reasonably come to a conclusion opposite of what Feldenz teaches. In view of this, Applicant is not acquiescing to the claim constructions or interpretations of the applied art made in the final Office action. Applicant reserves the right to further prosecute Claims 1-5.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 50-2257 for any matter in connection with this response, including any fee for extension of time and/or fee for additional claims, which may be required.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on March 9, 2005.



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Date of Signature

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